

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

)	
TRUEPOSITION INC.,)	
)	
Plaintiff/)	
Counterclaim-Defendant,)	
)	
v.)	Civil Action No. 05-747-SLR
)	
ANDREW CORPORATION,)	
)	
Defendant/)	
Counterclaim-Plaintiff.)	
)	

ANDREW CORPORATION’S OPPOSITION TO TRUEPOSITION’S MOTION TO PRECLUDE ANDREW FROM SUGGESTING THAT THE ‘144 PATENT IS INVALID AND FROM OFFERING TESTIMONY REGARDING THE INVENTION OF TDOA

Andrew’s witnesses, including its noninfringement expert Dr. David Goodman, should be allowed to testify about the history and operation of time difference of arrival (TDOA). In his opening statement, TruePosition’s counsel told the jury the ‘144 patent is “all about” TDOA. Trial Tr. at 97:1-17. Then, TruePosition’s infringement expert Dr. Oded Gottesman testified that the ‘144 patent “covers an invention of locating phones on a reverse control channel using the method of U-TDOA,” and provided a lengthy tutorial on TDOA. Tr. at 765:5-6; *see also id.* 777:14-790:14 (providing tutorial). Moreover, Dr. Gottesman has already admitted that TDOA dated back to the 1980s. Tr. at 1057:16-1059:23.

Andrew, in its case, should be able to respond to this TDOA factual background presented by TruePosition. TruePosition has long been on notice that Dr. Goodman would proffer such testimony. Dr. Goodman stated in his noninfringement report, the “[t]echnique at the heart of the purported invention is referred to as Time Difference of Arrival (TDOA) location

determination. TDOA location determination was a well known technique before the alleged invention.” Goodman Report at 9. This is not invalidity testimony, and will not be used as such, but it does give context and background to the scope of the invention and the patent-in-suit, and it is directly responsive to TruePosition’s presentation. The jury should not be left with a one-sided presentation from TruePosition. Dr. Goodman should be allowed to give similar background information and tutorial testimony regarding TDOA.

The jury should receive a balanced view of the technology, and the only way to do that is to allow *both* parties to address the issue with the jury. For these reasons, TruePosition’s motion should be denied and Andrew’s witnesses should be allowed to testify about the history and operation of TDOA calculations in the same manner as TruePosition’s Dr. Gottesman has already done.

Dated: September 10, 2007

Respectfully submitted,

/s/ Andrew A. Lundgren

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CERTIFICATE OF SERVICE

I, Andrew A. Lundgren, Esquire, hereby certify that on September 10, 2007, I caused copies of the foregoing document to be served upon the following counsel in the manner indicated:

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